

**THOMAS K. GODFREY**  
**Assistant U.S. Attorney**  
**U.S. Attorney's Office**  
**James F. Battin U.S. Courthouse**  
**2601 Second Ave. North, Suite 3200**  
**Billings, MT 59101**  
**Phone: (406) 657-6101**  
**FAX: (406) 657-6989**  
**E-Mail: Thomas.Godfrey@usdoj.gov**

**ATTORNEY FOR PLAINTIFF**  
**UNITED STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF MONTANA**  
**BILLINGS DIVISION**

|                                  |                          |
|----------------------------------|--------------------------|
| <b>UNITED STATES OF AMERICA,</b> | <b>CR 17-148-BLG-SPW</b> |
| <b>Plaintiff,</b>                |                          |
| <b>vs.</b>                       | <b>OFFER OF PROOF</b>    |
| <b>DARIN AKIYOSHI TOCHIHARA,</b> |                          |
| <b>Defendant.</b>                |                          |

The United States of America, represented by Assistant United States Attorney Thomas K. Godfrey, files its offer of proof in anticipation of the change of plea hearing set in this case on April 11, 2018.

## **THE CHARGE**

The defendant, Darin Akiyoshi Tochiara, is charged by indictment with robbery affecting commerce, in violation of 18 U.S.C. §§ 1951 and 2 (Count I); possession of a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(i)(ii) and (iii) (Count II); possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 (Count III); and felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1) (Count IV).

## **PLEA AGREEMENT**

There is a plea agreement in this case. Tochiara will plead guilty to Counts I and II of the indictment. The United States will move to dismiss Counts III, and IV at the time of sentencing, if the Court accepts the plea agreement. The plea agreement filed with the Court represents, in the government's view, the most favorable offer extended to the defendant. See *Missouri v. Frye*, 566 U.S. 134 (2012).

## **ELEMENTS OF THE CHARGE**

In order for Tochiara to be found guilty of Count I, robbery affecting commerce, in violation of 18 U.S.C. §§ 1951 and 2, the United States must prove each of the following elements beyond a reasonable doubt:

**First**, the defendant induced the victim to part with property by the wrongful use of actual or threatened force, violence, or fear;

**Second**, the defendant acted with the intent to obtain property; and

**Third**, commerce from one state to another was affected in some way.

In order for Tochiara to be found guilty of Count II, possession of a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(iii), the United States must prove each of the following elements beyond a reasonable doubt:

**First**, the defendant committed the crime of robbery affecting commerce as charged in Count I of the indictment, which is a crime of violence; and

**Second**, the defendant knowingly possessed, brandished, and discharged a firearm during and in relation to the robbery affecting commerce.

### **PENALTY**

The charge contained in Count I carries a maximum penalty of 20 years imprisonment, a \$1,000,000 fine, at least three years of supervised release, and a \$100 special assessment. The charge contained in Count II carries a mandatory minimum penalty of ten years to life imprisonment, consecutive to any other term of imprisonment, a \$250,000 fine, five years of supervised release, and a \$100 special assessment.

### **ANTICIPATED EVIDENCE**

If this case were tried in United States District Court, the United States would prove the following:

On July 11, 2017, the victim in this case, M.D., reported to law enforcement that he had been robbed at gunpoint. He reported that Darin Tochiara, and co-defendant Nikole Luttschwager, robbed him of approximately two ounces of methamphetamine at gunpoint. He stated that Tochiara held him at gunpoint and shot a hole in the roof of his camper during the robbery. During a mirandized interview, Tochiara stated that he had been selling methamphetamine for M.D. and owed him money. Tochiara admitted to borrowing a 9mm Hi Point C9, serial number P1276580 from an acquaintance. He went to M.D.'s trailer with the firearm, pointed the firearm at M.D. and demanded he get on the ground. The firearm went off. Tochiara and Luttschwager then robbed the methamphetamine and left M.D.'s trailer.

DATED this 6th day of April, 2018.

KURT G. ALME  
United States Attorney

/s/ Thomas K. Godfrey  
THOMAS K. GODFREY  
Assistant U.S. Attorney